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The Inter-Court Collegiality of Judge Carol Los Mansmann: A Reminiscence

*D. Brooks Smith**

The subject of judicial collegiality has been given some attention—though not much—in the legal literature. When that subject has been discussed, it has usually focused on the effects of collegiality on decision-making by courts of appeals.¹ To the best of my knowledge, collegiality among members of trial courts and the appellate tribunals that review the work of those trial courts is not a subject that has been a source of study by legal academics or of published comment by judges themselves. This may be best explained by the fact that the only appropriate means by which a trial judge may influence the decision of an appellate tribunal is by the force and reasoning contained within the legal ruling of that trial judge. Any other attempt by the judge of one court to influence the decision of another court would be entirely inappropriate.

Yet there is a sociology of judging that surrounds the relationships between trial courts and appellate courts that has apparently failed to attract the interest of academics. Perhaps the topic is simply too mundane. At all events, this is not a suggestion that law professors, psychologists, and sociologists should train their sights on interactions between judges of different courts as a means of discerning trends in jurisprudential development or as a way of explaining how judicial decision-making sometimes takes place. Were I undertaking in these pages an academic exercise, I would reject flat out such a neo-realist suggestion. What follows is, instead, a tribute to an appellate judge who valued and nurtured her relationships with colleagues on the trial court from

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1. See, e.g., Harry T. Edwards, *The Effects of Collegiality on Judicial Decision Making*, 151 U. PA. L. REV. 1639 (2003); James L. Oakes, *On Appeal: Courts, Lawyering, and Judging*, 104 YALE L.J. 2369, 2376-77 (1995) (reviewing FRANK M. COFFIN, *ON APPEAL: COURTS, LAWYERING AND JUDGING* 213-16 (1994)); Harry T. Edwards, *Collegiality and Decision Making on the D.C. Circuit*, 84 VA. L. REV. 1335, 1358-62 (1998); Deanell Reece Tacha, *The "C" Word: On Collegiality*, 56 OHIO ST. L.J. 585, 586-87 (1995).

which she was elevated. It is an affectionate and appreciative look back at how Judge Carol Los Mansmann, a former judge on the United States District Court for the Western District of Pennsylvania, related to me and to other judges of her former court while she served as a judge on the U.S. Court of Appeals for the Third Circuit. It is a personal reflection, not an academic discussion. It is, however, something of a case study of how an appellate judge sought to foster and maintain collegial relationships with judges whose work she occasionally reviewed—a professional relationship normally fraught with the potential for differences and occasional hurt feelings. Only Carol could have done it so effectively, and with such warmth.

As a bona fide “country lawyer” in the 1970s and 80s, my general trial practice took me to many of the counties in Central and Western Pennsylvania—but rarely to the courts located in Pittsburgh. I knew something of Carol Mansmann by reputation, but I had not appeared in her courtroom, nor had we even met. My four years on the Court of Common Pleas of Blair County brought me in contact with many of the state court judges from Allegheny County, but except for an annual federal-state court judges dinner in Pittsburgh, I had little opportunity for interaction with Article III judges.

In the summer of 1988, I was nominated by President Reagan to a judgeship on the U.S. District Court. The news release from the White House listed my name, the court to which I was nominated, and the words “vice Carol Los Mansmann.” I was to succeed to the position on the bench in the Western District of Pennsylvania that Carol had held until her elevation to the Third Circuit. That succession would become more and more significant to me with the passage of time.

The wait for Senate confirmation was excruciating. It was a presidential election year, and it was not possible to predict how many of President Reagan’s nominees would be confirmed by the Senate before it recessed. One day, while working in my Blair County chambers, I received a phone call from someone who wished to offer me words of encouragement and assistance in transitioning from Common Pleas Court judge to U.S. District Judge. It was not one of my soon-to-be colleagues on the district court. It was Carol Mansmann. I would be acceding to *her* judgeship, and she wanted to make sure I got started right. Her offer, and the obvious genuineness that accompanied it, could not have been more welcome.

Carol and I met for the first time not long after that call in her chambers in Pittsburgh. She meticulously explained to me how she had processed cases as a district judge, showing me binders in which she had made notes concerning cases that had been before her, from the first case management conference she conducted in each matter to its eventual resolution by trial or motion. It was readily apparent to me that this was a highly efficient judge, but also one with an exceedingly warm, human touch. She obviously cared deeply about the law and the people that it touched. And she also cared about the court she had once served. Carol wanted, at the earliest stage of my federal court career, to help me be a good judge.

I was confirmed for a seat on the district court. Through the vagaries of a process I have yet to fully comprehend, the United States Senate confirmed eight new judges before the end of the 100th Congress. It was then necessary that I plan a swearing-in ceremony. The scheduled investiture, planned for my old courtroom in Blair County on November 1, 1988, would be attended by all of my new judicial colleagues on the Western District bench. And by one judge of the U.S. Court of Appeals: Carol Mansmann.² The event was a decidedly district court affair, but Carol shared the bench with then-Chief District Judge Maurice Cohill and made remarks which both welcomed me and generously referred to the traditions of the Western District and the judges with whom she had previously served. She had a vested interest in being there: I was, as she put it, about to succeed to what she referred to as “my judgeship.” Her connections to the Western District were deeply rooted, and this new member of the federal judicial family did not fail to notice the fact that Carol Mansmann had an abiding concern for the court on which she had once served.

In my early years on the district court, Carol was always close by. Some of the judges with chambers in the federal courthouse on Grant Street regularly gathered for lunch across the street in the federal cafeteria. These were casual get-togethers, where the cuisine was not exactly *haute* and the conversation was not exactly lofty. Carol enjoyed the camaraderie, not to mention the stories and even gossip that usually animated those lunch-time discussions. I remember walking back to chambers with her after one of those typical midday repasts, with Carol likening the close-

2. Third Circuit Judge Joseph Weis wrote me a letter of welcome and well wishes, but he was unable to attend the investiture ceremony due to out-of-town court business.

ness of judges' relationships to familial ones. She wasn't simply interested in a colleague's jurisprudence; she wanted to know the whole person.

One of my valued colleagues on the Western District bench was senior judge Barron McCune. He was one of the "regulars" at the federal cafeteria lunch table, and a favorite of both Carol's and mine. Barron always looked like the judge central casting would have selected in the heyday of Hollywood. He was also a jurist of incomparable wisdom and practicality. And he was an inveterate cigar smoker. When Barron decided to retire from the district court bench, it was Carol Mansmann of the court of appeals who planned a retirement party for him at her home in Sewickley. "No gifts," she said. Each guest was just to bring a cigar for Barron. It resulted in a display of tobacco that would have made even Kipling envious.

In years past, the Third Circuit had a custom of inviting relatively new district judges to sit by designation on the court of appeals. It was an opportunity for district judges to learn, first-hand, the process of appellate review. It was also an exercise of inter-court collegiality that allowed judges of both courts to get to know one another on a more personal level. My first experience on a Third Circuit panel was sitting by designation on a three-judge panel with Carol Mansmann and now-Chief Judge Tony Scirica. It was always my suspicion that Carol had suggested to the Chief Judge that my introduction to appellate judging be on a panel of which she was a member. Carol's background as a law professor made her the quintessential mentor. It was clear that she wanted to teach me. Perhaps she simply thought I needed the tutoring.

At all events, once the briefs and appendices had arrived in my chambers in anticipation of the Third Circuit sitting, Carol suggested a working lunch in her chambers to show me how to prepare. And that's what she did. With take-out salads at her conference room table, we reviewed the list of appeals for the two days I would spend with her and Judge Scirica. In typical, organized fashion, Carol showed me how *she* prepared for a sitting. It was then that I first realized that this is very hard work that appeals court judges do. Carol relished it, and she obviously hoped that I would enjoy it as well, if only for this brief sitting.

I remember little of the cases we reviewed during that sitting back in 1990. I do remember two details, however, that further demonstrate how important it was to Carol that the sitting be a collegial experience. First, Carol insisted that my law clerks and I

join her and her clerks for dinner the first night of the sitting at a restaurant in South Philadelphia. Over Italian food and *vino rosso*, my two clerks had the opportunity to become acquainted with this truly extraordinary woman who, up until then, had been to them just a remote judicial personage on the court of appeals. Even then, Carol was teaching. She was mentoring not only me, but my law clerks as well.

The other minor detail involves the conferences we three judges conducted to discuss the arguments we had heard. Each morning, Judge Scirica and I walked into Carol's chambers to be greeted with fresh coffee and fresh pastry. Carol always wanted people around her to be comfortable. All these years later, the fact that my memory embraces gastronomic examples of Carol Mansmann's conviviality in the midst of work and not the jurisprudential details of the sitting is either evidence of my own superficiality or a testament to Carol's unique ability to make those around her feel at ease. I prefer to think it is the latter.

Carol's first bout with cancer was a terrible experience that all of us in the federal courthouse family followed with enormous concern. Yet it was a trial that showed Carol Mansmann at her best. Determined. Courageous. Unwilling to allow this misfortune to intrude upon her work on a court which she revered. She prevailed and continued to tackle her caseload with the same zest and dedication she had always demonstrated.

When my long-time secretary was celebrating her 50th birthday, I organized a small surprise party in chambers over the noon hour, inviting all of the judicial assistants in the courthouse. They all showed up—along with Carol. Typically, she didn't want to miss a party. She was the only judge in attendance (besides me), and she wanted to convey her own birthday wishes to my secretary. It was one of those seemingly small gestures in life that carry extraordinary meaning.

There came a time when Carol and I were to participate in a moot court at the University of Pittsburgh Law School. She called me the morning of the competition and asked if she could ride with me over to the law school. She was having back problems, she said, and was not able to drive. The doctor had told her it was probably a minor problem that could have occurred by simply turning during a night's sleep. She seemed otherwise unaffected. The moot court exercise was uneventful, and Carol was as engaged as I had ever seen her. She was, of course, back in her teaching mode.

It was not long before the tragic news was confirmed. Carol's cancer had returned—this time to her bones. All who knew her were anguished by this turn of events. As for Carol, she continued to show amazing determination. She soldiered on valiantly, impressing colleagues, her staff, and friends with the energy and enthusiasm she continued to display for the work of her court. In the fall of 2001, when then-Chief Judge Ed Becker of the Third Circuit was in Pittsburgh, he visited Carol at her home. She was, by then, having difficulty traveling into her chambers. When Ed and I spoke afterward, he just shook his head and remarked on her tremendous courage. Ed was, at the same time, suffering from prostate cancer which would eventually take his life in May of 2006—but after he had shown the same grit and dedication that Carol herself had demonstrated.

In January of 2001, I became Chief Judge of the Western District. By September of that year, I had been nominated to a vacancy on the Third Circuit. Carol had encouraged me. In fact, Carol had encouraged me over the years to consider the court of appeals if a seat became available. Earlier in my career I had had little interest. I saw myself as a trial lawyer and a trial judge. For whatever reason, Carol thought I had the potential to do the work of a court of appeals judge. I realize now that that encouragement was also an act of inter-court collegiality. I have now seen first-hand how the almost monastic life of the circuit makes it imperative that one have colleagues with whom s/he can work, and engage, and trust. Appellate judging is a lonely professional calling, which makes relationships with colleagues all the more important.

On the morning of March 10, 2002, I learned that the cancer which Carol had fought so bravely for so many years had finally overcome her. As Chief District Judge, my first action was to direct that the flag atop our Courthouse on Grant Street be lowered to half mast. The following day, Carol's husband, Jerry, called me. He had seen the flag as he drove downtown and wanted me to know how much Carol would have appreciated the tribute. And he told me how much she had hoped that I would soon be confirmed and that we would be Third Circuit colleagues. Sadly—tragically—that was not to be.

Although we did not serve as colleagues on the same court, Carol Mansmann still taught me something about judging. From our first meeting when I was yet to be confirmed, she made me feel like a valued colleague. She fostered such relationships with those of us on the district court because she understood our work

and because she wanted the federal judiciary in the Western District and within the Third Circuit to be like a family. Judicial collegiality was of value in and of itself, and her role in fostering it is, for me, an important part of her legacy.

